

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff, and	§	Civil Action No.
	§	
STATE OF TEXAS,	§	4-07-cv-3795
	§	
Plaintiff-Intervenor,	§	JUDGE ATLAS
	§	
v.	§	
	§	
HALLIBURTON ENERGY SERVICES,	§	
INC., et al.	§	
	§	
Defendants.	§	

CONSENT DECREE

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I. BACKGROUND

A. The United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter against the nine named Defendants pursuant to Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9607 and 9613, as amended ("CERCLA"), seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at three facilities located in Webster, Texas (the "Webster Site"), Odessa, Texas (the "Odessa Site"), and Houston, Texas (the "Tavenor Site"), known collectively as the "Gulf Nuclear Sites" or "Sites" as well as declaratory relief. The State of Texas, on behalf of the Texas Commission on Environmental Quality ("TCEQ"), filed a complaint in intervention against the same Defendants asserting claims under both CERCLA and State law. Defendants have asserted counterclaims and crossclaims against the United States and the State of Texas.

B. The Gulf Nuclear Sites were formerly owned and operated by one or more corporations in a family of corporations related to The GNI Group, Inc. (collectively referred to herein as "GNI") and used in combination to manufacture, store, rework, repair, and dispose, or collect for disposal, radioactive materials containing hazardous substances. Radioactive materials handled at the Sites included the hazardous substances americium, cesium, radium, cobalt, zinc, plutonium, scandium, gadolinium, iridium, and/or iodine.

C. Beginning at the Odessa Site in April 2001, the Webster Site in October 2001, and the Tavenor Site in October 2001, EPA undertook response actions, including investigations and removals, in response to alleged releases and threatened releases of dangerous radioactive materials at the three Gulf Nuclear Sites, pursuant to Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and the National Contingency Plan. At each site, the response action consisted of securing the facilities, the identification and removal of radioactive sources and additional containers of radioactive materials, demolition and removal of contaminated buildings, and removal of contaminated soils. Radioactive debris and source materials, including greater than "Class C" waste ("GTCC") of americium-241 and cesium-137, were transported to eight disposal or storage facilities. EPA continues to incur costs in connection with the Sites for the storage of a large quantity of GTCC because no commercial facility is currently licensed to accept such waste for permanent disposal in the United States. Pursuant to Section 104(c) of CERCLA, 42 U.S.C. § 9604(c); and Section 361.133 of the Texas Solid Waste Disposal Act, TEX. HEALTH & SAFETY CODE § 361.133; the TCEQ incurred at least \$1,984,000 in response costs for the Sites.

D. In November 2007, the United States filed its complaint under CERCLA in the above-captioned matter (the "Action") for recovery of response costs incurred and to be incurred in connection with the Sites. Also in November 2007, the State of Texas intervened in this Action, bringing identical CERCLA claims and a cost recovery claim under Texas state law.

E. The Defendant entering into this Consent Decree, Pengo Industries, Inc. (hereinafter "Settling Defendant" as more fully defined herein), does not admit any liability to the United States or the State arising out of the transactions or occurrences alleged in the Action.

F. The United States, the State, and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 9607 and 9613(b), and also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. The Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367. Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, the State, and upon Settling Defendant and their heirs, predecessors, successors, and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 *et seq.*
- b. "Consent Decree" shall mean this Consent Decree and any appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.
- c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

e. "Effective Date" shall be the date upon which this Consent Decree is entered by the Court as recorded on the Court docket, or, if the Court instead issues an order approving the Consent Decree, the date such order is recorded on the Court docket.

f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

g. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

h. "Federal Response Costs" shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. §9601(25), incurred or to be incurred by the United States, including direct and indirect costs, in connection with the Gulf Nuclear Sites.

i. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

j. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

k. "Parties" shall mean the United States, the State of Texas, and Pengo Industries, Inc.

l. "Plaintiffs" shall mean the United States of America and the State of Texas.

m. "Response Actions" shall mean all response actions taken or to be taken by the United States or the State in connection with the Gulf Nuclear Sites, including the ongoing and future long-term storage off-site of radioactive materials (e.g. Greater Than Class C Wastes) removed from the Sites, but excluding any additional response action taken pursuant to Plaintiffs' reservation of rights in Sections VIII and X.

n. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

o. "Settling Defendant" shall mean Pengo Industries, Inc., and shall include its successors and assigns, but only to the extent the liability of such predecessor, successor or assign arises out of the same activities relating to the Sites that gave rise to the alleged liability of Settling Defendant that forms the basis for the claims in the Action against Settling Defendant.

p. "Sites" or "Gulf Nuclear Sites" shall mean the Odessa Site located at 2717 West 81st St., Odessa, Texas, the Webster Site located at 202 Medical Center Blvd., Webster, Texas, and the Tavenor Site located at 9320 Tavenor Street, Houston, Texas.

q. "State" shall mean the State of Texas, acting on behalf of the TCEQ;

r. "State Response Costs" shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), and all costs of "remedial action"

and "removal" as those terms are defined by section 361.003(29 & 30) of the Texas Solid Waste Disposal Act, TEX. HEALTH & SAFETY CODE § 361.003(29 & 30), incurred or to be incurred by the State, including direct and indirect costs, in connection with the Gulf Nuclear Sites.

s. "TCEQ" shall mean the Texas Commission on Environmental Quality, an agency of the State of Texas, and its predecessor and successor agencies.

t. "TSWDA" shall mean the Texas Solid Waste Disposal Act, TEX. HEALTH & SAFETY CODE § 361.001 *et seq.* (Vernon 2001 & Supp. 2009).

u. "United States" shall mean the United States of America, including all of its departments, agencies and instrumentalities, which includes without limitation EPA and the Department of Energy.

V. PAYMENT OF RESPONSE COSTS

4. a. Payment to EPA for Federal Response Costs: In payment for Federal Response Costs, by no later than 15 business days after signing this Decree, Settling Defendant shall deposit the sum of \$815,000 into an escrow account bearing interest on commercially reasonable terms, in a federally-chartered bank (the "Federal Response Costs Escrow Account[s]"). If the Consent Decree is not entered by the Court, and the time for any appeal of that decision has run or if the Court's denial of entry is upheld on appeal, the monies placed in escrow under this subparagraph, together with all accrued interest thereon, shall be returned to the Settling Defendant or the parties making payment on its behalf in accordance with their respective contributions. If the Consent Decree is

entered by the Court, Settling Defendant shall, within 15 business days thereof, cause the monies in the Federal Response Costs Escrow Account, including all interest earned on the deposits, to be paid to EPA in accordance with Paragraph 5(a) and (b) below. The total payment by Settling Defendant to EPA for Federal Response Costs pursuant to this sub-paragraph shall be deposited by EPA in the Gulf Nuclear Sites Special Account to be retained and used to conduct or finance response actions at or in connection with the Sites, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

b. Payment to State for State Response Costs. In payment for State Response Costs, by no later than 15 business days after signing this Decree, Settling Defendant shall deposit the sum of \$81,500 into an escrow account bearing interest on commercially reasonable terms, in a federally-chartered bank (the "State Response Costs Escrow Account"). If the Consent Decree is not entered by the Court, and the time for any appeal of that decision has run or if the Court's denial of entry is upheld on appeal, the monies placed in escrow, together with all accrued interest thereon, shall be returned to the Settling Defendant or the parties making payment on its behalf in accordance with their respective contributions. If the Consent Decree is entered by the Court, Settling Defendant shall, within 15 business days thereof, cause the monies in the State Response Costs Escrow Account, including all interest earned on the deposits, to be paid to the State in accordance with Paragraph 5(c) below. Of the total amount to be paid by Settling Defendant under this sub-paragraph, \$7,500 shall be designated as attorneys' fees payable to the Texas Attorney General's Office, and the balance of

\$74,000, and all accrued interest, shall be deposited by the State into the Texas Hazardous and Solid Waste Remediation Fee Account (Fund 550), in reimbursement for the TCEQ's response costs.

5. (a) All payments to the United States required under this Consent Decree, shall be made at <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the Southern District of Texas after the Effective Date. The payment instructions provided by the Financial Litigation Unit shall include a Consolidated Debt Collection System ("CDCS") number, which shall be used to identify all payments required to be made in accordance with this Consent Decree. The FLU shall provide the payment instructions to: those persons identified in Paragraph 31 on behalf of Settling Defendant[s]. Settling Defendant may change the individual to receive payment instructions on their behalf by providing written notice of such change in accordance with Section XII (Notices and Submissions).]

(b) All payments made to the United States under Sections V or VI shall reference the CDCS Number, EPA Site/Spill Identification Numbers 06KN, 06MD, and 06ME, DOJ Case Number 90-11-3-07730/1, and the civil action number. At the time of any payment required to be made in accordance with Sections V or VI, Settling Defendant shall send notice that payment has been made to the United States, and to EPA, in accordance with Section XII (Notices and Submissions), and to the EPA Cincinnati Finance Office by email at acctsrceivable.cinwd@epa.gov, or by mail at

26 Martin Luther King Drive, Cincinnati, Ohio 45268. Such notice shall also reference the CDCS Number, Site/Spill ID Number, and DOJ Case Number.

(c) Instructions for Payments to the State of Texas. All payments required to be made to the State shall be made by Electronic Funds Transfer ("EFT") to the Comptroller of Public Accounts, State of Texas, for the Attorney General's Suspense Account, using the following instructions:

Financial Institution:	TX COMP AUSTIN
Routing Number:	114900164
Account Name:	Comptroller of Public Accounts Treasury Operations
Account Number to Credit:	463600001
Reference:	AG No. 05-2214038 (Gulf Nuclear)
Attention:	Office of the Attorney General Chief, EPAI Div. (463-2012)
Contact:	Abel Rosas, Fin. Rptg (475-4380)

At the time of payment, Settling Defendant shall likewise send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, in accordance with Section XII of this Decree (Notices and Submissions), and shall send a copy by email to Thomas.Edwards@oag.state.tx.us. The transmittal letter shall state that the payment is made pursuant to this Consent Decree, and shall reference the civil action number of this case and AG No. 05-2214038.

6. Payments of Interest made under this Section shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 7.

VI. FAILURE TO COMPLY WITH CONSENT DECREE

7. Stipulated Penalty.

a. If an amount due under Paragraph 4 to the United States or the State is not paid by the required date, Settling Defendant shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 6, \$1,000.00 (one thousand dollars) per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of such penalties by the United States, or the State, as applicable. All payments under this Paragraph shall be identified as "stipulated penalties" and shall be made in accordance with Paragraph 5.

c. Penalties shall accrue as provided in this Paragraph regardless of whether the United States, or the State, as applicable, has notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due, and shall continue to accrue through the date of payment.

8. If Settling Defendant fails to pay stipulated penalties when due, Settling Defendant shall pay Interest on the unpaid stipulated penalties. Interest shall accrue from the date of demand under Paragraph 7 until the date of payment. If Settling Defendant fails to pay stipulated penalties and Interest when due, the United States and/or the State, as applicable, may institute proceedings to collect the penalties and Interest.

9. If the United States or the State brings a successful action to enforce this Consent Decree against Settling Defendant for noncompliance with the terms of this Decree, Settling Defendant shall reimburse the United States and/or the State, as applicable, for all costs of such action, including but not limited to costs of attorney time.

10. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiffs by virtue of such Settling Defendant's failure to comply with the requirements of this Consent Decree.

11. Notwithstanding any other provision of this Section, the United States and/or the State, as applicable, may, in their unreviewable discretion, waive payment of any portion of the stipulated penalties owing to that sovereign that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendant from payment as required by Section V or from performance of any other requirements of this Consent Decree.

VII. COVENANT NOT TO SUE BY UNITED STATES

12. Except as specifically provided in Section VIII (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106, 107(a) and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607(a) and 9613 for Federal Response Costs or Response Actions related to the Gulf Nuclear Sites. This covenant not to sue shall take effect upon receipt by EPA of the payment required by Settling Defendant under Section V, Paragraph 4 (Payment of Response Costs) and any Interest or stipulated penalties due thereon under paragraph 6

and Section VI (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendant and does not extend to any other person.

VIII. RESERVATION OF RIGHTS BY UNITED STATES

13. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant to perform further response actions relating to the Sites, or to reimburse the United States for additional costs of response if, subsequent to the Effective Date of this Consent Decree:

- a. conditions at the Sites, previously unknown to EPA, are discovered; or
- b. information, previously unknown to EPA, is received, in whole or in part;

and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Response Actions taken with respect to the Sites are not protective of human health or the environment.

14. For purposes of Paragraph 13, information and conditions known to EPA shall include only that information and those conditions (1) set forth in the Administrative Records for the Response Actions for each of the Gulf Nuclear Sites, and (2) set forth in documents prepared by or approved by EPA as of the dates of the final Pollution Reports for each Site; or (3) set forth in responses to CERCLA section 104(e) information

requests submitted to EPA for the Sites, or produced by EPA to Defendants or to EPA by Defendants during discovery in this action through March 2010.

15. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the Covenant Not to Sue by United States in Paragraph 12. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:

- a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability, based on ownership or operation of the Sites by Settling Defendant, when such ownership or operation commences after signature of this Decree, or on Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Sites, after signature of this Consent Decree;
- e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Sites, but excluding those hazardous substances removed by EPA and transported off-site as part of the Response Actions for the Sites.

IX. COVENANT NOT TO SUE BY THE STATE

16. Except as specifically provided in Section X (Reservation of Rights by the State), the State covenants not to sue or to take administrative action against Settling Defendant pursuant to CERCLA, the TSWDA, or the civil and administrative sections of the Texas Water Code, related to the Gulf Nuclear Sites. This covenant not to sue shall take effect upon receipt by the State of the payment required by Section V, Paragraph 4 (Payment of Response Costs) and any Interest or stipulated penalties due thereon under paragraph 6 and Section VI (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendant and does not extend to any other person.

X. RESERVATION OF RIGHTS BY THE STATE

17. Notwithstanding any other provision of this Consent Decree, the State reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant to perform further response actions relating to the Sites, or to reimburse the State for additional costs of response if, subsequent to the Effective Date of this Consent Decree:

- a. conditions at the Sites, previously unknown to the TCEQ, are discovered; or
- b. information, previously unknown to the TCEQ, is received, in whole or in part, and the TCEQ determines that these previously unknown conditions or this information

together with other relevant information indicate that the Response Actions taken with respect to the Site are not protective of human health or the environment.

18. For purposes of Paragraph 17, information and conditions known to TCEQ shall include only that information and those conditions (1) set forth in the Administrative Records for the removal actions for each of the Gulf Nuclear Sites, (2) set forth in documents prepared by or approved by TCEQ as of the dates of the final Pollution Reports for each Site; or (3) produced by TCEQ to Defendants or to TCEQ by Defendants during discovery in this Action through March 2010.

19. The State reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the Covenant Not to Sue by the State in Paragraph 16. Notwithstanding any other provision of this Consent Decree, the State reserves all rights against Settling Defendant with respect to:

- a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability, based on ownership or operation of the Sites by Settling Defendant, when such ownership or operation commences after signature of this Decree, or on Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for

the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Sites, after signature of this Consent Decree; and

e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Sites, but excluding those hazardous substances removed by EPA and transported off-site as part of the "Response Actions" for the Sites.

XI. COVENANT NOT TO SUE BY SETTLING DEFENDANT

20. With respect to the Sites or this Consent Decree, Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, or the State, or their contractors or employees, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the Response Actions at the Sites for which the Federal or State Response Costs were incurred, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claims against the United States, including any department, agency or instrumentality of the United States, under CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607 and 9613, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law, regarding the Sites and this Consent Decree;

- d. any claims or causes of action with respect to the Sites and this Consent Decree against any entity operating the isotope distribution program at the Oak Ridge National Laboratory pursuant to a contract with DOE or its predecessors;
- e. any direct or indirect claim for reimbursement from the Texas Hazardous and Solid Waste Remediation Fee Account (Fund 550) through CERCLA Sections 107 or 113, any provision of the TSWDA, or any other provision of law;
- f. any claims against the State, including any department, agency or instrumentality of the State, under CERCLA Sections 107 or 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law regarding the Gulf Nuclear Sites or this Consent Decree;
- g. any claims arising out of response actions at or in connection with the Gulf Nuclear Sites, including any claim under the United States Constitution, the Texas Constitution, statutes or at common law;
- h. any claim that the State's actions in this case have been frivolous, unreasonable, or without foundation, within the meaning of TEX. HEALTH & SAFETY CODE § 361.342, or that its pleadings have been groundless, brought in bad faith, brought for the purpose of harassment, fictitious or false, within the meaning of TEX. R. CIV. P. 13.

21. Except as provided in Paragraph 27 (waiver of res judicata, estoppel and claim-splitting defenses), these covenants not to sue shall not apply in the event that the United States or the State brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 13-15 and 17-19, but only to the extent that Settling Defendant's claims arise from the same response action, response costs, or damages that

the United States or the State is seeking pursuant to the applicable reservation.

22. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

23. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The Parties expressly reserve any and all rights, including, but not limited to, any right to contribution, defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Sites against any person not a Party hereto.

24. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendant is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all Response Actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Sites, by the United States (Federal Response Costs), the State (State Response Costs), or by any other person. The "matters addressed" in this Consent Decree do not include those response costs incurred or response actions taken pursuant to reopeners for unknown conditions and/or as to which the United States or the State has reserved rights under this Consent Decree as

set forth in Sections VIII and X (Reservations of Rights by the United States and the State).

25. This Consent Decree constitutes a settlement agreement that resolves all liability of the Settling Defendant to the State regarding the Gulf Nuclear Sites, within the meaning of TEX. HEALTH & SAFETY CODE § 361.277(b), and therefore the Settling Defendant is released from liability to other persons who have incurred or will incur response costs at the Gulf Nuclear Sites, as described in TEX. HEALTH & SAFETY CODE § 361.344(a), for cost recovery, contribution, or indemnity regarding a "matter addressed" in this Consent Decree, as provided by TEX. HEALTH & SAFETY CODE § 361.277(b).

26. Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify the United States and the State in writing no later than 45 days prior to the initiation of such suit or claim. Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify the United States and the State in writing within 30 days of service of the complaint or claim upon it. In addition, Settling Defendant shall notify the United States and the State within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

27. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other relief

relating to the Sites, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in this Action; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by United States or the Covenant Not to Sue of the State set forth in Sections VII and IX.

XIII. RETENTION OF RECORDS

28. Until 5 years after the entry of this Consent Decree, Settling Defendant shall preserve and retain (in hard copy or readable electronic format) all records now in its possession or control, or which come into its possession or control, that relate in any manner to Response Actions taken at the Sites or the liability of any person under CERCLA with respect to the Sites, regardless of any corporate retention policy to the contrary. Records retained electronically must be maintained in a format that can be accessed/retrieved by the United States and the State with standard and commercially available software and hardware at the end of the retention period.

29. After the conclusion of the 5-year document retention period in the preceding paragraph, Settling Defendant shall notify the United States and the State at least 90 days prior to the destruction of any such records, and, upon request by the United States or the State, Settling Defendant shall deliver any such records to the United States and/or the State. For the delivery of electronically retained documents, upon request by

the United States or the State, Settling Defendant will provide the software or hardware required by the governments to access the data or, alternatively, will produce hard copies of the documents. Settling Defendant may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal or state law. If Settling Defendant asserts such a privilege, they shall provide Plaintiffs with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (e.g., company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiffs in redacted form to mask the privileged information only. Settling Defendant shall retain all records that they claim to be privileged until the United States and/or the State has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States or the State pertaining to the Sites shall be withheld on the grounds that they are privileged.

30. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any manifests, shipping, or other disposal records, reports, or information relating to transactions with the Sites and relating to its potential liability regarding the Sites since the earlier of notification of potential liability by the

United States or the filing of suit against it regarding the Sites and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(c) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6972.

XIV. NOTICES AND SUBMISSIONS

31. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Settling Defendants in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, the State, and Settling Defendant, respectively.

As to the United States:

Notice shall be provided to DOJ and EPA as provided below.

As to DOJ:

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-07730/1

As to EPA:

Anne Foster

Assistant Regional Counsel (6RC-S)
US EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

Greg Fife
On Scene Coordinator, Superfund Division
US EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

Team Leader, Superfund Enforcement Assessment Team
US EPA Region 6 (6SF-TE)
1445 Ross Avenue
Dallas, Texas 75202-2733

As to the State:

Chief, Env'tl. Protection Section
Env'tl. Protection and Admin. Law Division
(Attn: Thomas Edwards, Asst. Atty. Gen.)
Office of the Attorney General (018)
P.O. Box 12548
Austin TX 78711-2548

Or delivered to:
Wm. P. Clements State Office Bldg.
300 W. 15th St., Fl. 10
Austin TX 78701-1649

- and -

David L. Davis
Federal Liaison, Homeland Security
(Re: Gulf Nuclear Superfund Sites)
Texas Commission on Environmental Quality
P.O. Box 13087 (MC-172)
Austin TX 78711-3087
Or delivered to:
Bldg. C, Rm. 304W
12100 Park 35 Circle

Austin TX 78753

As to Settling Defendant:

Jim Plohg
General Counsel
Pengo Industries, Inc.
885 Third Avenue, 34th Floor
New York, New York 10022

-and-

Edward Lewis
Fulbright & Jaworski, L.L.P.
1301 McKinney, Suite 5100
Houston, Texas 77035

XV. RETENTION OF JURISDICTION

32. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVI. INTEGRATION

33. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

34. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. The State, acting through the Attorney General of Texas, reserves the right to withhold consent if the public comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of Texas law. Settling Defendant consents to the entry of this Consent Decree without further notice.

35. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVIII. SIGNATORIES/SERVICE

36. Each undersigned representative of Settling Defendant to this Consent Decree, the Assistant Attorney General of the Environment and Natural Resources Division of the United States Department of Justice, and the Attorney General of Texas for the State, certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

37. Settling Defendant hereby agrees not to oppose entry of this Consent Decree

by this Court or to challenge any provision of this Consent Decree, unless the United States or the State have notified Settling Defendant in writing that they no longer support entry of the Consent Decree.

38. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

XIX. FINAL JUDGMENT

39. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States, the State, and the Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

40. Parties to submit a status report on or before August 15, 2011.

SO ORDERED THIS 14th DAY OF July, 2011.



Nancy F. Atlas
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States, et al. v. Halliburton Energy Services, Inc. et al., relating to the Gulf Nuclear Sites:

FOR THE UNITED STATES OF AMERICA:



ROBERT G. DREHER
Acting Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice
Washington, D.C. 20530



KENNETH G. LONG
Trial Attorney
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
202-514-2840
202-616-6584 (fax)
kenneth.long@usdoj.gov

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States, et al. v. Halliburton Energy Services, Inc. et al., relating to the Gulf Nuclear Sites:


FOR THE UNITED STATES OF AMERICA (continued):


JOSÉ ANGEL MORENO
United States Attorney
Southern District of Texas

KEITH EDWARD WYATT
Assistant United States Attorney
Southern District of Texas
P.O. Box 61129
Houston, TX 77208
Voice: (713) 567-9000
Fax: (713) 567-9510
Email: keith.wyatt@usdoj.gov

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States, et al. v. Halliburton Energy Services, Inc. et al., relating to the Gulf Nuclear Sites:

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:


for SAMUEL COLEMAN, P.E.
Director, Superfund Division
U.S. Environmental Protection Agency
1445 Ross Avenue
Dallas, TX 75202


for ANNE FOSTER
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 6
1445 Ross Avenue (6RC-S)
Suite 1200
Dallas, Texas 75202

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States, et al. v. Halliburton Energy Services, Inc. et al., relating to the Gulf Nuclear Sites:

FOR THE STATE OF TEXAS

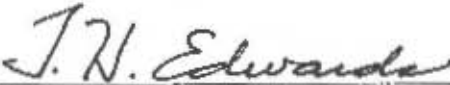
GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

BILL COBB
Deputy Attorney General for Civil Litigation

BARBARA B. DEANE
Chief, Environmental Protection and Administrative
Law Division

DAVID PREISTER
Chief, Environmental Protection Section


THOMAS H. EDWARDS
Assistant Attorney General
Tex. Bar No. 06461800
S.D. Tex. No. 152099

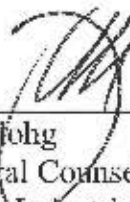
DAVID L. GREEN
Assistant Attorney General
Tex. Bar No. 24037776
S.D. Tex. No. 765257

OFFICE OF THE ATTORNEY GENERAL
P.O. Box 12548
Austin, Texas 78711-2548
Tel: (512) 463-2012
Fax: (512) 320-0052

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States, et al. v. Halliburton Energy Services, Inc. et al., relating to the Gulf Nuclear Sites:

FOR SETTLING DEFENDANT

Pengo Industries, Inc.

A handwritten signature in black ink, appearing to read 'Jim Pfohg', is written over a horizontal line.

Jim Pfohg
General Counsel
Pengo Industries, Inc.
885 Third Avenue, 34th Floor
New York , New York 10022